

AMENDED IN SENATE AUGUST 19, 2016

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AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2820

**Introduced by Assembly Member Chiu
(Principal coauthor: Assembly Member Wilk)**

February 19, 2016

An act to amend Section 396 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2820, as amended, Chiu. Crimes: price gouging: states of emergency.

Under existing law, upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is a misdemeanor with specified penalties for a person, contractor, business, or other entity to sell or offer to sell certain goods and services for a price that exceeds by 10% the price charged by that person immediately prior to the proclamation of emergency, except as specified.

This bill would revise the definitions of a state of emergency and a local emergency to mean a natural or manmade ~~disaster or emergency~~ *caused by conditions such as, but not limited to, air pollution, emergency resulting from an earthquake, fire, flood, fire, riot, storm, epidemic,*

riot, drought, ~~sudden and severe energy shortage~~, or plant or animal infestation or disease, *or other natural or manmade disaster* for which a state of emergency has been declared by the President of the United States or the Governor of California or for which a local emergency has been declared by an official, board, or other governing body vested with authority to make such a declaration in any city, county, or city and county in California, respectively. The bill would include ~~the transportation of persons and towing services in the provisions described above.~~ The bill would also specify that housing means any rental housing with an initial lease term of no longer than one year for purposes of these provisions. The bill would make other clarifying and conforming ~~changes~~ *changes, including, among others, a specification that these provisions apply to both a state of emergency and a local emergency,* and *would* make certain additional findings by the Legislature. By expanding the scope of an existing crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 396 of the Penal Code is amended to
2 read:
3 396. (a) The Legislature hereby finds that during ~~emergencies~~
4 ~~and major disasters~~, *a state of emergency or local emergency*,
5 including, but not limited to, ~~air pollution, earthquakes, fires,~~
6 ~~floods, civil disturbances, storms, and other natural and manmade~~
7 ~~disasters~~, *an earthquake, flood, fire, riot, storm, drought, plant or*
8 *animal infestation or disease, or other natural or manmade*
9 *disaster*, some merchants have taken unfair advantage of consumers
10 by greatly increasing prices for essential consumer goods and
11 services. While the pricing of consumer goods and services is
12 generally best left to the marketplace under ordinary conditions,
13 when a declared state of emergency *or local emergency* results in
14 abnormal disruptions of the market, the public interest requires

1 that excessive and unjustified increases in the prices of essential
2 consumer goods and services be prohibited. It is the intent of the
3 Legislature in enacting this act to protect citizens from excessive
4 and unjustified increases in the prices charged during or shortly
5 after a declared state of emergency *or local emergency* for goods
6 and services that are vital and necessary for the health, safety, and
7 welfare of consumers. Further, it is the intent of the Legislature
8 that this section be liberally construed so that its beneficial purposes
9 may be served.

10 (b) Upon the proclamation of a state of emergency declared by
11 the President of the United States or the Governor, or upon the
12 declaration of a local emergency by an official, board, or other
13 governing body vested with authority to make such a declaration
14 in any county, city, or city and county, and for a period of 30 days
15 following that *proclamation or* declaration, it is unlawful for a
16 person, contractor, business, or other entity to sell or offer to sell
17 any consumer food items or goods, goods or services used for
18 emergency cleanup, emergency supplies, medical supplies, home
19 heating oil, building materials, housing, transportation, freight,
20 and storage services, or gasoline or other motor fuels for a price
21 of more than 10 percent above the price charged by that person
22 for those goods or services immediately prior to the proclamation
23 *or declaration* of emergency. However, a greater price increase is
24 not unlawful if that person can prove that the increase in price was
25 directly attributable to additional costs imposed on it by the supplier
26 of the goods, or directly attributable to additional costs for labor
27 or materials used to provide the services, provided that in those
28 situations where the increase in price is attributable to additional
29 costs imposed by the seller's supplier or additional costs of
30 providing the good or service during the state of *emergency or*
31 *local* emergency, the price represents no more than 10 percent
32 above the total of the cost to the seller plus the markup customarily
33 applied by the seller for that good or service in the usual course
34 of business immediately prior to the onset of the state of *emergency*
35 *or local* emergency.

36 (c) Upon the proclamation of a state of emergency declared by
37 the President of the United States or the Governor, or upon the
38 declaration of a local emergency by an official, board, or other
39 governing body vested with authority to make such a declaration
40 in any county, city, or city and county, and for a period of 180

1 days following that *proclamation or declaration*, it is unlawful for
2 a contractor to sell or offer to sell any repair or reconstruction
3 services or any services used in emergency cleanup for a price of
4 more than 10 percent above the price charged by that person for
5 those services immediately prior to the *proclamation or declaration*
6 of emergency. However, a greater price increase is not unlawful
7 if that person can prove that the increase in price was directly
8 attributable to additional costs imposed on it by the supplier of the
9 goods, or directly attributable to additional costs for labor or
10 materials used to provide the services, provided that in those
11 situations where the increase in price is attributable to the additional
12 costs imposed by the contractor's supplier or additional costs of
13 providing the service during the state of *emergency or local*
14 emergency, the price represents no more than 10 percent above
15 the total of the cost to the contractor plus the markup customarily
16 applied by the contractor for that good or service in the usual course
17 of business immediately prior to the onset of the state of *emergency*
18 *or local* emergency.

19 (d) Upon the proclamation of a state of emergency declared by
20 the President of the United States or the Governor, or upon the
21 declaration of a local emergency by an official, board, or other
22 governing body vested with authority to make such a declaration
23 in any county, city, or city and county, and for a period of 30 days
24 following that proclamation or declaration, it is unlawful for an
25 owner or operator of a hotel or motel to increase the hotel or
26 motel's regular rates, as advertised immediately prior to the
27 proclamation or declaration of emergency, by more than 10 percent.
28 However, a greater price increase is not unlawful if the owner or
29 operator can prove that the increase in price is directly attributable
30 to additional costs imposed on it for goods or labor used in its
31 business, to seasonal adjustments in rates that are regularly
32 scheduled, or to previously contracted rates.

33 (e) The provisions of this section may be extended for additional
34 30-day periods, as needed, by a local legislative body, local official,
35 the Governor, or the California Legislature, if deemed necessary
36 to protect the lives, property, or welfare of the citizens.

37 (f) A violation of this section is a misdemeanor punishable by
38 imprisonment in a county jail for a period not exceeding one year,
39 or by a fine of not more than ten thousand dollars (\$10,000), or
40 by both that fine and imprisonment.

(g) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.

(h) For the purposes of this section, the following terms have the following meanings:

(1) “State of emergency” means a natural or manmade ~~disaster or emergency caused by conditions such as, but not limited to, air pollution, emergency resulting from an~~ earthquake, ~~fire,~~ flood, ~~fire, riot, storm, epidemic, riot,~~ drought, ~~sudden and severe energy shortage, or~~ plant or animal infestation or ~~disease~~ *disease, or other natural or manmade disaster* for which a state of emergency has been declared by the President of the United States or the Governor of California.

(2) “Local emergency” means a natural or manmade ~~disaster or emergency caused by conditions such as, but not limited to, air pollution, emergency resulting from an~~ earthquake, ~~fire,~~ flood, ~~fire, riot, storm, epidemic, riot,~~ drought, ~~sudden and severe energy shortage, or~~ plant or animal infestation or ~~disease~~ *disease, or other natural or manmade disaster* for which a local emergency has been declared by an official, board, or other governing body vested with authority to make such a declaration in any county, city, or city and county in California.

(3) “Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(4) “Repair or reconstruction services” means services performed by any person who is required to be licensed under the Contractors’ State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of a disaster.

(5) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

1 (6) “Medical supplies” includes, but is not limited to,
2 prescription and nonprescription medications, bandages, gauze,
3 isopropyl alcohol, and antibacterial products.

4 (7) “Building materials” means lumber, construction tools,
5 windows, and anything else used in the building or rebuilding of
6 property.

7 (8) “Gasoline” means any fuel used to power any motor vehicle
8 or power tool.

9 (9) “Transportation, freight, and storage services” means any
10 service that is performed by any company that contracts to move,
11 store, or transport personal or business property or that rents
12 equipment for those purposes, including towing services, ~~or any~~
13 ~~service that provides transportation to persons.~~ *services.*

14 (10) “Housing” means any rental housing with an initial lease
15 term of no longer than one year.

16 (11) “Goods” has the same meaning as defined in subdivision
17 (c) of Section 1689.5 of the Civil Code.

18 (i) Nothing in this section shall preempt any local ordinance
19 prohibiting the same or similar conduct or imposing a more severe
20 penalty for the same conduct prohibited by this section.

21 (j) A business offering an item for sale at a reduced price
22 immediately prior to the proclamation *or declaration* of the
23 emergency may use the price at which it usually sells the item to
24 calculate the price pursuant to subdivision (b) or (c).

25 SEC. 2. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.